

New Companies Ordinance
Briefing Notes on
Company Records (Inspection and Provision of Copies) Regulation

BACKGROUND

Under the Companies Ordinance (Cap. 32) (“Cap. 32”), different types of company records are subject to different requirements concerning the place for keeping of records as well as the manner for their inspection and provision of copies (including the fees payable). The requirements that apply to each type of company record are prescribed in the respective sections or schedule of Cap. 32. Although the specific requirements vary from one type of record to another, the usual arrangement is as follows –

- (a) *Keeping of records* : the records must be kept at the registered office of the company, or at a place where the records are made up;
- (b) *Inspection* : the records must be made available for inspection during business hours, subject to any reasonable restrictions imposed at general meetings so long as not less than two hours are available for inspection each day; and
- (c) *Provision of copies*: the copy is to be provided within 7 to 20 calendar days to the requestor on payment on a fee, usually at \$2 for every 100 words.

2. The obligations concerning the keeping and inspection of company records and the provision of copies are provided for in the respective sections of the new Companies Ordinance (“new CO”). Sections 356 and 657 of the new CO further provide that the Financial Secretary may make regulations to prescribe the place where such records may be kept as well as the specific requirements concerning the inspection or provision of copies of company records. The regulations may also provide for the offences and the penalty in the case of contravention.

THE SUBSIDIARY LEGISLATION

Company Records (Inspection and Provision of Copies) Regulation (“the Regulation”)

3. The Regulation provides the arrangements and procedures concerning company records kept by a company in the following aspects – (i) the place for keeping of records; (ii) the inspection of records; and (iii) the provision of copies of records. The Regulation applies only to those company records which the new CO has identified and stipulated as being subject to the Regulation. For example, it does not apply to accounting records, which are governed by sections 373 to 378 of the new CO.

Major Changes

4. The Regulation allows the keeping of company records at any place in Hong Kong if, under the relevant provisions in the new CO, that type of company records may be kept at a place prescribed by regulations made under section 356 or 657 of the new CO.

5. In respect of the inspection of company records (where the relevant provisions in the new CO have provided that the inspection is subject to regulations made under section 356 or 657 of the new CO), the obligation for companies to make available company records for inspection follows that under Cap. 32, and the records must be made available for inspection by any person entitled to inspect those records under a relevant provision during business hours, subject to reasonable restrictions that may be imposed by the company by resolution, as long as at least two hours per day are allowed for inspection.

6. The Regulation provides that a request for inspection must identify the type of records being sought and the date on which they were made (or the period covered). The Regulation also provides for the right to make copies of the records concerned during inspection.

7. More detailed provisions have also been included on the power of the Court of First Instance (“the Court”) to compel inspection in the case where a company fails to entertain the request for inspection or to allow copying of the records in the course of inspection in accordance with the Regulation.

8. The inspection fee, which usually applies in the case where the requestor is not a member of the company, has been standardised at \$50.

9. For the provision of copies (where the relevant provisions in the new CO have provided that copies of the records may be provided subject to regulations made under section 657 of the new CO), the two key elements are the lead time for responding to a request and the fees payable for the copies by the requestor. The lead time is standardised in all cases as 10 business days (i.e. general holidays and days of inclement weather excluded) as compared to the range of 7 to 20 calendar days under Cap. 32.

10. As regards the fees payable, the calculation basis has been modified and the fees are to be calculated according to the number of entries in the case of a register (at \$5 for every 10 entries within the first 2,000 entries requested, to be followed by \$1 for every 100 entries thereafter) or otherwise the number of pages in the case of records other than registers (at \$5 per page), instead of the typical approach of using the number of words as the calculation basis under Cap. 32.

11. Similarly, more detailed provisions have also been included in the Regulation on the powers of the Court where a request for provision of copies is not complied with.

12. The Regulation also sets out the circumstances under which the company must provide copies in electronic or hard copy form.

13. The Regulation also provides offences for contravention of the obligations contained therein. Contravention by the company or any responsible person creates an offence which is liable upon conviction to be punished by a fine at Level 4.

The Regulation

14. The Regulation comprises four parts –
- (a) *Part 1* provides for the commencement of the Regulation and interpretation of the term “company records”;
 - (b) *Part 2* prescribes the place where company records may be kept or made available for inspection;
 - (c) *Part 3* provides for the inspection of company records, which includes (i) the manner of making a request, (ii) the fee payable for an inspection, and (iii) the obligations of companies to make available company records for inspection during business hours and to permit a copy of company records to be made in the course of inspection. It also provides for the powers of the Court to make certain orders relating to the inspection of company records; and
 - (d) *Part 4* provides for the obligation of companies to provide copies of company records within 10 business days upon receipt of the request or payment of the prescribed fees for the copies (whichever is the later). It also prescribes the fee payable for a copy of company records and empowers the Court to make certain orders relating to the provision of a copy of company records.

Companies Registry

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